

California Code of Regulations
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

Division 23. State Cemetery Board

(Originally Printed 3-4-50)

Article 1. General

§2300. Location of Office.

The principal office of the Board is located at 2535 Capitol Oaks Drive, Suite 300B, Sacramento, California 95833.

Note: Authority cited: Section 9630, Business and Professions Code. Reference cited: Section 9630, Business and Professions Code.

History

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history see Register 63, No. 3.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
4. Change without regulatory effect amending section filed 2-8-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 6).

§2301. Tenses, Gender and Number.

For the purpose of the rules and regulations contained in this chapter, the present tense includes the past and future tenses, and the future, the present; the masculine gender includes the feminine, and the feminine, the masculine; and the singular includes the plural, and the plural, the singular.

§2302. Definitions.

For the purpose of the rules and regulations contained in this chapter, the term "Board" means the Cemetery Board; the term "Code" means Business and Professions Code; and the term "Act" means the Cemetery Act.

§2303. Delegation of Certain Functions.

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearings, statements to respondent and statements of issue; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the Executive Officer, or, in his or her absence from the office of the Board, the acting Executive Officer.

Note: Authority cited: Section 9630, Business and Professions Code; and Section 11152, Government Code. Reference: Section 9628, Business and Professions Code.

History

1. Editorial correction filed 12-15-83; effective thirtieth day thereafter (Register 83, No. 51).

§2304. Filing of Addresses.

Each person holding a certificate of authority, license, permit or any other authority to practice or engage in any activity in the State of California under any and all laws administered by the Board shall file his proper and current mailing address with the Board, at its office in Sacramento, and immediately notify the Board of any and all changes of mailing address, giving both his old and his new address.

Article 2. Fees

§2310. Regulatory Charge.

(a) The annual regulatory charge to be paid by every cemetery authority operating a cemetery under the Act is fixed at the sum of four hundred dollars (\$400) plus an additional quarterly charge of (1) eight dollars and fifty cents (\$8.50) for each burial, entombment, inurnment, or cremation made during the preceding quarter. If the Cemetery authority performed the cremation and either the burial, entombment, or inurnment, the total of all additional charges shall be not more than eight dollars and fifty cents (\$8.50).

Once the loans authorized by chapter 38, Statutes of 1996, and by chapter 162, Statutes of 1996, are repaid, but no later than April 1, 2003, the quarterly charge for each burial, entombment, inurnment, or cremation made during the preceding quarter reverts back to a charge of (1) fifty cents (\$0.50) per interment made during the preceding full calendar year; and (2) one dollar (\$1.00) per cremation made during the preceding full calendar year.

(b) The annual regulatory charge to be paid by every licensed crematory is fixed at the sum of four hundred dollars (\$400) plus an additional quarterly charge of eight dollars and fifty cents (\$8.50) for each cremation made during the preceding quarter.

Once the loans authorized by chapter 38, Statutes of 1996, and by chapter 162, Statutes of 1996, are repaid, but no later than April 1, 2003, the quarterly charge for each cremation made during the preceding full calendar year reverts back to a charge of fifty cents (\$.50) per cremation made during the preceding full calendar year.

Note: Authority cited: Sections 102.1, 9630 and 9765, Business and Professions Code. Reference cited: Sections 9765 and 9786, Business and Professions Code.

History

1. Amendment filed 12-26-79 as an emergency; effective upon filing (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 4-25-80. For prior history, see Registers 63, No. 3; 73, No. 41; 75, No. 49; and 77, No. 47.

2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

3. Amendment of subsection (a) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

4. Amendment of subsections (a) and (b) to reduce the amount of the charges filed 11-28-88; operative 12-31-88 (Register 88, No. 51).

5. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

6. Amendment filed 12-30-96 as an emergency; operative 1-1-97 (Register 97, No. 11) A Certificate of Compliance must be transmitted to OAL by 5-1-97 or emergency language will be repealed by operation of law on the following day.

§2311. Filing Fee.

(a) An initial filing fee of four hundred dollars (\$400) shall accompany an original application for a certificate of authority to operate a cemetery. In the event the expenses of the board's investigation, computed at the rate of \$100 per day per man, shall exceed this amount, the applicant shall, within five days after request therefor, deposit such additional sums as deemed necessary by the board provided that the total sum shall not exceed nine hundred dollars (\$900).

(b) An initial filing fee of four hundred dollars (\$400) shall accompany an original application for a crematory license. In the event the expenses of the board's investigation, computed at the rate of \$100 per day per man, shall exceed this amount, the applicant shall, within five days after request therefor, deposit such additional sums as deemed necessary by the board provided that the total sum shall not exceed nine hundred dollars (\$900).

Note: Authority cited: Sections 9630, 9717 and 9783, Business and Professions Code. Reference cited: Sections 9717 and 9783, Business and Professions Code.

History

1. New section 2311 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).

2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).

3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2312. Cemetery Broker Original License Fee.

The cemetery broker original license fee shall be four hundred dollars (\$400).

Note: Authority cited: Sections 9630 and 9751, Business and Professions Code. Reference: Section 9751, Business and Professions Code.

History

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history, see Register 59, No. 7.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2313. Cemetery Broker Re-Examination Fee.

The cemetery broker re-examination fee shall be one hundred dollars (\$100).

Note: Authority cited: Sections 9630 and 9752, Business and Professions Code. Reference: Section 9752, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2314. Cemetery Broker License Renewal Fee.

The cemetery broker license renewal fee shall be three hundred dollars (\$300).

Note: Authority cited: Sections 9630 and 9753, Business and Professions Code. Reference: Section 9753, Business and Professions Code.

History

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history, see Register 59, No. 7.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2315. Cemetery Broker Multiple Corporate Officer or Partner License Renewal Fee.

Pursuant to Sections 9754 and 9755 of the Business and Professions Code, the cemetery broker renewal license fee for a license issued to a second or additional corporate officer or partner of a partnership shall be one hundred dollars for each license in addition to the first fee paid by the corporation or partnership.

Note: Authority cited: Sections 9630, 9754 and 9755, Business and Professions Code. Reference: Sections 9754 and 9755, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2316. Cemetery Broker Branch Office License Fee.

The cemetery broker branch office license fee shall be one hundred dollars (\$100).

Note: Authority cited: Sections 9630 and 9760, Business and Professions Code. Reference: Section 9760, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2319. Cemetery Salesman Re-Examination Fee.

Note: Authority cited: Sections 9630 and 9757, Business and Professions Code. Reference: Section 9757, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).
4. Change without regulatory effect repealing section filed 4-8-97 pursuant to section 100, title 1. California Code of Regulations (Register 97, No. 15).

§2320. Cemetery Salesman License Renewal Fee.

The cemetery salesman license renewal fee shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9759, Business and Professions Code. Reference: Section 9759, Business and Professions Code.

History

1. New Section 2313 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2313 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 2-20-63; designated effective 4-1-63 (Register 63, No. 3).
4. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
5. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
6. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
7. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2321. Change of Name or Address Fee.

The fee for change of name or address on the records of the board shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9761, Business and Professions Code. Reference: Section 9761, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 2-20-63; designated effective 4-1-63 (Register 63, No. 3). Editorial correction, Register 63, No. 16.
3. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
4. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
5. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2322. Cemetery Salesman Transfer Fee.

The fee for transfer of a cemetery salesman's license upon change of employer shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9762, Business and Professions Code. Reference: Section 9762, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).

4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2323. Duplicate License Fee.

The fee for a duplicate license shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9763, Business and Professions Code. Reference: Section 9763, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

§2324. Reinstatement Fee.

The fee for reinstatement of a cemetery broker's license or salesman's license within a fiscal year shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9764, Business and Professions Code. Reference: Section 9764, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

Article 3. Applications and Licenses

§2326. Applications for Cemetery and Crematory Certificates of Authority.

(a) Certificate of Authority. Applications for a certificate of authority to operate a cemetery shall be filed on the form furnished by the board at the principal office of the board. In addition to the payment of the fees required by Section 2311 of these rules, each application shall be accompanied by the following:

(1) A certified copy of:

(A) Articles of incorporation.

(B) Application for permit to sell and issue securities.

(C) Permit to sell and issue securities.

(D) Application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both.

(E) Land use or zoning permit.

(F) Declaration of dedication to cemetery purposes certified by the county recorder.

(G) Deed to the property, contract of purchase or any other instrument which provides the applicant with merchantable title thereto.

(H) Endowment care trust agreement executed by the board of directors of the cemetery authority.

(2) A statement signed by a majority and verified by one of the directors of the applicant, which statement shall set forth:

(A) Names and addresses of the incorporators, directors, officers and trustees of the endowment care fund, including the person who will be in charge of sales, together with a statement of their experience and fitness to engage in cemetery business.

(B) Statement of compensation received or to be received by the officers, directors and all sales agents and/or managers.

(C) A complete and detailed financial statement showing assets, liabilities and reserve.

1. If the applicant is a new corporation, the statement shall designate the amount of stock subscribed, the consideration paid for all stock issued and the amount of promotional stock involved.

2. If the applicant has engaged in business for a period of time, the statements shall include complete operating profit and loss statements for the preceding three (3) years or such period of time as the applicant has been in business if less than three years.

(D) Itemized statement of estimated receipts (from all sources, capitalization, sales, loans, etc.) and expenditures of the applicant for at least five (5) years or such other period as the board may require by written notice to the applicant.

(E) A statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes.

(F) A statement of the applicant's proposed plan of operation which shall include type of selling, approximate size or sales department, number of acres initially developed, etc.

(G) Statement of the amount deposited to the endowment care fund, type of investment made or to be made and the proposed rate of contribution for the future.

(3) An independent confirmation from the depository or other such proof of deposit of the initial contribution to the endowment care fund as required by Section 8738.1 of the Health and Safety Code of the State of California.

(4) A good and substantial map of the proposed cemetery site (scale not less than 1 inch to 500 feet) and surrounding area showing highways, access roads, etc., and area to be initially developed delineated thereon.

(5) Such other matters as the board may require by written notice to the applicant.

(b) Crematory License Application. Application for a crematory license shall be filed on the form furnished by the board at the principal office of the board. In addition to the payment of the fees required by Section 2311 of these rules, each application shall be accompanied by the following:

(1) A certified copy of:

(A) Articles of incorporation, if applicant is a corporation.

(B) Partnership agreement, if applicant is a partnership.

(C) Land use or zoning permit.

(D) Permit to operate a crematory issued by the local air pollution control district.

(E) Deed, lease or other instrument which provides the applicant with the right to possess and use the property where the business will be located.

(2) A statement signed by the applicant if the applicant is an individual; signed by the majority and verified by one of the directors, if the applicant is a corporation; or signed and verified by a majority of the partners, if applicant is a partnership, which statement shall set forth:

(A) A complete and detailed financial statement showing assets, liabilities, and reserves.

(B) A statement of proposed plan of operation which shall include the type of selling.

(C) A full, true, and complete copy of the standard agreement which will be used for funding of prearranged cremations.

(3) Plans and specifications of the crematory and building, which must be sufficient to allow the board to determine, among other things:

(A) Fire resistant character.

(B) Adequacy of storage for cremated and uncremated remains.

(4) Such other matters as the board may require by written notice to the applicant.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9715, 9716, 9717, 9765, 9781, 9782, 9783 and 9786, Business and Professions Code; and Section 8738.1, Health and Safety Code.

History

1. New Sections 2315 and 2316 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering of Sections 2315 and 2316 to 2326 and 2327 respectively filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2326.1. Managers.

(a) Each cemetery for which a new certificate of authority is required shall be operated under the supervision of a managing officer qualified as such by the board.

(1) The applicant for a new certificate of authority, in addition to the requirements of Section 2326, will designate the managing officer. There shall be submitted with the application the written statement of such officer demonstrating that he has two years' experience in the cemetery business, or equivalent experience, which experience shall be commensurate with the size, type, and scope of the proposed activities of the cemetery authority. Additional managing officers who have been qualified and examined by the board may be designated by the applicant and can succeed the managing officer in the event of death, resignation, disability, or other inability to perform the required duties.

(b) Each crematory for which a crematory license is required shall be operated under the supervision of a manager designated by the applicant and qualified as such by the board. Additional managers who have been qualified and examined by the board may be designated by the applicant and can succeed the manager in the event of death, resignation, disability, or other inability to perform the required duties.

Note: Authority cited: Sections 9630 and 9787, Business and Professions Code. Reference: Sections 9715, 9717, and 9787, Business and Professions Code.

History

1. New section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

§2326.2. Managing Officer Examination.

Note: Authority cited: Sections 9630 and 9787, Business and Professions Code. Reference: Sections 9702.5, 9715, 9716, 9717 and 9787, Business and Professions Code.

History

1. New section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
3. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).
4. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§2327. Cemetery Salesman Application.

If an applicant for a license as a cemetery salesman changes employers after filing his application and before the license applied for is issued, such application shall be deemed void and the applicant must file another fee and application.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9701 and 9702.1, Business and Professions Code.

History

1. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2328. Abandonment of Application for a Cemetery License.

Pursuant to Section 9702.5 of the Code, an applicant must qualify by written examination, notice of which will be forwarded to the applicant by the board. If the applicant fails to appear at the time and place designated by the board, the board may deem the application abandoned after the expiration of the following periods:

Cemetery broker... Six (6) months

Cemetery salesman... Two (2) months

Provided, however, that an application shall not be deemed abandoned if an applicant has filed a written request to take a subsequent examination prior to the expiration of the appropriate time periods. In the absence of special circumstances, the applicant whose application has been deemed abandoned shall file a new application accompanied by the required fee.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9702.5 and 9715, Business and Professions Code.

History

1. New Section 2317 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2317 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2329. Abandonment of Application for a Certificate of Authority.

An application shall be deemed abandoned and all fees previously paid shall be deemed forfeited if the applicant for a certificate of authority refuses or fails to comply with the provisions of Section 2326 within one year from the date of written notification by the board of the documents or information required to be submitted. The applicant shall be notified in writing of such action. Any application so abandoned may not be reinstated; however, the applicant may file a new application accompanied by the required fees and documents.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9702.5, 9716, 9781 and 9782, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2330. Substantial Relationship Criteria.

For the purposes of denial, suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a cemetery broker or salesman if to a substantial degree it evidences present or potential unfitness of a cemetery broker or salesman to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Conviction of a crime involving fiscal dishonesty.
- (b) Any violation of the provisions of Chapter 19, Division 3 of the Code.

Note: Authority cited: Sections 481 and 9630, Business and Professions Code. Reference: Section 481, Business and Professions Code.

History

1. Repealer and new section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11). For prior history, see Register 73, No. 20.
2. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2331. Criteria for Rehabilitation.

(a) When considering the denial of a license under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivisions (1) and (2) .
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license on the ground that a cemetery broker or salesman has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a).

Note: Authority cited: Sections 482 and 9630, Business and Professions Code. Reference: Sections 480 and 482, Business and Professions Code.

History

1. Repealer and new section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11). For prior history, see Register 73, No. 20.
2. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2332. Interments in Non-Licensed Cemeteries.

Upon the request of a holder of a right of interment in a cemetery, the certificate of authority of which has lapsed or has been revoked, (Hereinafter referred to as "the nonoperating cemetery"), or on its own initiative, the Board may arrange through another cemetery or through such person or firm, or corporation, as it deems advisable, to make interments in the nonoperating cemetery. No such interments shall be authorized by the Board or made unless there has

been paid in full to the Board sufficient funds to reimburse the actual direct cost of interment. The power and discretion conferred by law upon the Board to authorize such interments are hereby delegated to and conferred upon the Executive Secretary of the Board, or, in his absence from the office of the Board, the Acting Executive Secretary.

Notwithstanding the rules and regulations of the nonoperating cemetery relative to outside burial containers, the Board may authorize the use of such containers as it deems appropriate.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9718, Business and Professions Code.

History

1. New section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
2. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

Article 4. Signs, Contracts, Literature, Etc.

§2336. Nonendowment Care Interment Property in an Endowment Care Cemetery.

(a) Signs. Each nonendowment care section of an endowment care property, containing property available for sale, shall be separately set off by signs prominently placed designating same as a nonendowment care section. These signs shall be at least 16 inches high and 24 inches wide and shall be mounted upright thus being perpendicular to level ground. Each sign shall contain the following:

(1) A heading containing the words "NONENDOWMENT CARE SECTION" in black lettering at least four inches high.

(2) The phrase "This section is nonendowment care interment property" in black lettering at least 1 1/4 inches high.

(b) Contracts, Literature, Etc. There shall be printed at the head of all contracts, literature, etc., pertaining to nonendowment care property, the following phrase:

"The property described herein is NONENDOWMENT CARE Interment Property."

The lettering shall appear in a minimum of 10-point type and the words "NONENDOWMENT CARE" shall be in capital letters.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 8740, 8743 and 8744, Health and Safety Code.

History

1. New section 2320 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2320 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2337. Nonendowment Care Cemeteries.

(a) Signs.

(1) Entrance Signs. Each nonendowment care cemetery shall post a sign at each entrance. These signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright thus being perpendicular to level ground. Each sign shall contain the following:

(A) A heading containing the words "NONENDOWMENT CARE" in black lettering at least four inches high.

(B) The phrase "This is a nonendowment care interment property" in black lettering at least 1 1/4 inches high.

(2) Office Signs. Each nonendowment care cemetery shall post a sign in the office or offices where sales are conducted. These signs shall be at least 8 inches high and 12 inches wide and shall contain the following:

(A) A heading containing the words "NONENDOWMENT CARE" in black lettering at least two inches high. (B) The phrase "This is a nonendowment care interment property" in black lettering at least three-fourths inch high.

(b) Contracts, Literature, Etc. There shall be printed at the head of all contracts, literature, publications, etc., of nonendowment care cemeteries the following phrase:

"This institution is operated as a 'NONENDOWMENT CARE' Interment Property."

The lettering shall appear in a minimum of 10-point type and the words "NONENDOWMENT CARE" shall be in capital letters.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 8743 and 8744, Health and Safety Code.

History

1. New Section 2321 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering from 2321 to 2337 filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2338. Cemetery Broker.

Each cemetery broker shall post in a conspicuous place in the office or offices where sales are conducted a legible sign which shall indicate that he is a licensed cemetery broker and his name shall be clearly indicated thereon. This sign shall be at least 5 1/2 inches high and 8 1/2 inches wide.

Note: Authority cited: Sections 9630 and 9713, Business and Professions Code. Reference: Section 9713, Business and Professions Code.

History

1. New Section 2322 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering from 2322 filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2339. Form and Content of Crematory Contracts.

(a) Pursuant to Section 9784 of the Code, every contract shall be in writing and shall contain all of the agreements of the parties. Such a contract shall clearly state the following:

- (1) The total contract price.
- (2) Terms of payment.
- (3) An itemized statement of charges including, as applicable, the following:
 - (A) Charges for preparation of the body.
 - (B) Charges for storage.
 - (C) Charges for permits.
 - (D) Charges for cremation and disposition.
 - (E) Charges for transportation.
 - (F) Any other charges, which shall be particularized.

(b) Any contract, arrangement or plan for the prearrangement of cremation or cremation services shall provide in sufficient detail the manner in which funds paid on account of such arrangements are to be handled including, but not limited to, the following:

- (1) The name or names of the persons, firm or entity with custodial responsibility for such funds.
- (2) The manner in which such funds and earnings thereon are held.

(3) A provision that any such prearrangement is wholly revocable at any time and that the person establishing such arrangement may recover funds and earnings thereon. Such funds, less an amount not to exceed ten percent of the earned income as a revocation fee, shall be furnished to the person establishing such arrangement within 15 days of receipt of a notice of revocation as provided in the prearrangement contract.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9784, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2339.1. Cemetery Contracts; Price Disclosure.

A contract for the sale of prearranged cemetery services or commodities, the price of which may be modified at the time of delivery of those services or commodities, shall contain the following disclosure statement on the face of the contract in 10-point bold type:

"YOU, THE PURCHASER, WILL HAVE TO PAY, AT THE TIME OF NEED, ANY ADDITIONAL CHARGES RESULTING FROM PRICE INCREASES FOR THE FOLLOWING PREARRANGED SERVICES AND COMMODITIES:"

Until January 1, 1984, a licensee may comply with this section by obtaining the purchaser's signature on an addendum which contains the disclosure statement. The licensee shall give the purchaser a copy of the signed addendum together with a copy of the contract of sale, and shall retain the original signed addendum and attach it to the contract of sale.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 8277, Health and Safety Code.

History

1. New section filed 12-27-82; effective thirtieth day thereafter (Register 83, No. 1).

§2340. Maintenance of Records.

(a) Each crematory licensee and each holder of a certificate of authority who operates a crematory shall keep a record of all remains cremated and such record shall contain the following:

- (1) Name and address, if known, of the deceased.
- (2) Date burial permit was issued.
- (3) County issuing burial permit.
- (4) Name, address, and relationship of person or persons authorizing cremation and disposition.
- (5) Date of the contract for cremation.
- (6) Date, time, and place remains were picked up or received by the licensee.
- (7) Date and time of cremation.
- (8) Date, time, place, and type of disposition of the cremated remains or name of person or entity to whom the cremated remains were released.

(b) Upon abandonment of the license or termination of licensure, records required by this section shall be turned over to a cemetery approved by the board or to the board.

(c) This section shall not be interpreted to require the holder of a certificate of authority to maintain a separate set of records pertaining to cremations.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9719 and 9785, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Amendment of Note filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).
3. Amendment of subsection (a), and new subsection (c) filed 3-30-90; operative 4-29-90 (Register 90, No. 16).
4. Editorial correction restoring History 1 and 2 (Register 94, No. 29).

Article 5. Annual Reports

§2350. Endowment Care Fund Reports.

The terminology of Section 9650(c) of the Code shall be deemed to require the certificate of the accountant or auditor preparing such statement and shall be deemed to have been complied with when prepared by a licensed independent certified public accountant or public accountant provided that such statements fully and accurately disclose the position of the endowment care fund and that such certificate does not contain disclaimers or qualifications such as to preclude the rendering of an independent opinion.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9650, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

§2351. Crematory Report.

Each crematory licensee shall file annually with the board a written report on the form prescribed by the board setting forth:

- (a) Total number of cremations made.
- (b) Disposition of cremations indicating the number which were:
 - (1) Burials at sea.
 - (2) Released to a cemetery authority.
 - (3) Released to the person or persons who authorized cremation.
 - (4) Other dispositions (describe).
- (c) The amount collected and funded for prearranged cremations.
- (d) The amount of funds invested in each of the investments authorized by Section 8778 of the Health and Safety Code.
- (e) Each annual report by a crematory licensee accepting funds for prearranged cremations shall be accompanied by a financial statement prepared by an independent licensed certified public accountant or public accountant.

Note: Authority cited: Sections 9630 and 9783, Business and Professions Code. Reference cited: Section 9785, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

Article 6. Special Care Funds

Preface

In the establishment of agreements between the cemetery authority and a person or persons bequeathing, granting, or giving funds or property in trust as allowed by the provisions of Section 8775 of the Health and Safety Code, the cemetery authority should consider other provisions of law applicable thereto. As an example thereof, reference is made to Division 3, Parts 4, 5 and 8, Chapters 1 and 2 of the Civil Code dealing with trusts. Further, if these particular trusts are not to be revocable by the trustor, such has been held to constitute an insurance business for which a certificate of authority from the Insurance Commissioner is required (See 4 Ops. Cal. Atty. Gen. 103 (NS-5568); 17 Ops. Cal. Atty. Gen. 24 (50/194)).

§2370. Special Trusts.

Trusts established for burial purposes pursuant to Section 8775 of the Health and Safety Code including cremation or other commodities or services furnished at the time of and in connection with such cremation or interment are under the supervision of the State Cemetery Board and must comply with the following requirements:

(a) All moneys paid directly or indirectly and all securities delivered under the trust agreement or any agreement collateral thereto shall constitute the "trust corpus."

(b) None of the trust corpus shall be used for payment of commission or other expenses of trust administration.

(c) The trust agreement shall specifically set forth any expenses to be charged to the trustor out of income to the trust or any portion of the trust corpus to be retained by the trustees or cemetery authority upon revocation and a copy thereof shall be delivered to the trustor; provided, however, such revocation fee to be retained by the trustee or cemetery authority shall not exceed ten (10) percent of the trust corpus.

(d) Other than as provided in Subsection (c) hereof, the trust income shall be used solely for the purposes authorized by Section 8775 of the Health and Safety Code.

(e) Unless specific property or securities are placed in trust by the trustor, investments of these funds shall be in investments authorized by law—for example, as authorized by Health and Safety Code Sections 8751 and 8751.1 as well as Civil Code Sections 2228 through 2239 and 2261 .

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 8775, Health and Safety Code.

History

1. New Article 6 filed 11-16-60; effective thirtieth day thereafter (Register 60, No. 23).
2. Amendment filed 9-2-69; effective thirtieth day thereafter (Register 69, No. 36).
3. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

Article 7. Disciplinary Proceedings

§2380. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et. seq.), the board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines for Cemeteries, Crematories, Cremated Remains Disposers, Managers, Brokers, and Salespeople (September 1997)" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Section 9630, Business and Professions Code, Sections 11425.50 (e) Government Code. Reference: Sections 11425.50 (e) Government Code.

History

1. New section filed 7-20-98; effective thirtieth day thereafter (Register 98, No. 30). For prior history, see Register 82, No. 35.

§2381. False or Misleading Representations.

Pursuant to Section 9726 of the Code, the board may suspend or revoke the license of any cemetery licensee or the certificate of authority of any cemetery corporation which engages in misrepresentation, dishonest dealings or fraudulent conduct in connection with a trust or other agreement authorized by Health and Safety Code Section 8775, including but not limited to misrepresentations concerning the revocability of such instrument or the amount of commission or trust expenses to be paid or deducted thereunder.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9726, 11200 and 11500, Business and Professions Code.

History

1. Repealer and new section filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

Article 7.5. Citation and Fines

§2382. Issuance of Citations and Fines.

(a) The director of the Department of Consumer Affairs is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensee or registrant of the provisions of law referred to in section 2383 of this article.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the director within 30 days of the issuance of the citation. The citation shall be served upon the licensee personally or by certified mail.

(c) The amount of any fine to be levied by the director shall take into consideration the factors listed in section 2384 of this article and shall be within the range set forth in section 2383 of this article. In no case shall the total exceed \$2,500 for each investigation.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New article 7.5 and section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2383. Fines.

- (a) The fine for a violation of the following provisions shall be from \$150 to \$1,500:

Rule	Description
2340	Maintenance of records
2370	Special trusts
Business and Professions Code	
9679	Employing unlicensed salespersons
9684	Advertising statements
9702.2	Cemetery broker bond
9719	Access during inspection
9743	Scattering remains
9749	Scattering of remains
9785	Filing crematory report H & S Code
7050.5	Removal of remains from county
7051	Removal of remains without authorization
7051.5	Dental gold and silver
7052	Disinterment without authority
7054	Disposal in place other than cemetery
7054.7(a)	Commingling of cremated remains

8342	Cremation-casket requirement
8360	Loans to officers/directors
8362	Loans to officers/directors
8733	Trustee fees
8734	Bond requirement
8738.2	Endowment care funds
8747.5	Books and records-availability
8751	Endowment care fund investments
8777	Special care funds
8778	Special care fund investments

(b) The fine for a violation of the following provisions shall be from \$100 to \$1,000:

Rule	Description
2339	Crematory contracts
2351	Crematory report
2381	Misrepresentation B & P Code
9682	Representations re resale of property
9726	Misrepresentations
9728	Discharge of salespersons-report
9744	Cremated remains disposer-permit
9745	Cremated remains disposer-annual report
9767	Payment of regulatory charges
9784	Cremation restrictions

Health & Safety Code

7053	Failure to release human remains
8120	Notice re change in cemetery use
8277	Contracts
8278	Contract cancellation
8330	Record of interment
8331	Record of plot ownership
8573	Pre-construction sale of crypts
8726	Endowment care investments
8732	Trustees
8732.1	Trustees
8780	Misrepresentation re endowment care
8781	Misrepresentation re endowment care
9550	Mausoleum construction without permit

(c) The fines for a violation of the following provisions shall be from \$50 to \$500:

Rule	Description
2336	Nonendowment care signs
2337	Nonendowment care signs
2338	Cemetery broker signs
2339.1	Cemetery contracts B&P Code
9680	Compensation to unlicensed brokers
9709	Display license
9710	Return license
9711	Notice of change in location
9713	Cemetery broker sign

Health and Safety Code

7055	Removal of human remains
8276	Charges for markers
8309	Regulations-availability
8734	Bond
8740	Nonendowment care signs
8741	Endowment care signs-posting
8744	Nonendowment care contracts

(d) In his or her discretion, the director may issue a citation containing an order of abatement without levying a fine for the first violation of any provision set forth in subsections (a) through (c) above.

Note: Authority cited: Sections 102.1, 125.9, 9630 and 9658, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2384. Citation Factors.

In assessing an administrative fine or issuing an order of abatement, the director shall give due consideration to the following factors:

- (a) The nature and severity of the violation.
- (b) The good or bad faith of the cited person or entity.
- (c) History of violations of the same or similar nature.
- (d) Evidence that the violation was willful.
- (e) The extent to which the cited person or entity has cooperated with the department's investigation.
- (f) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (g) Such other matters as justice may require.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2385. Failure to Comply with Order.

(a) The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the director in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement. Any order granting a request for an extension shall be in writing and shall specify the new date for compliance.

(b) An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2386. Contest of Citations.

(a) In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the director in writing of his or her request

for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The director shall hold, within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the director may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The director shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of Section 2382, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall mark the conclusion of the informal conference proceeding.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the director. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days of the date of issuance in accordance with subdivision (b)(4) of Section 125.9 of the code.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2387. Unlicensed Practice.

The director of the Department of Consumer Affairs may issue citations against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the department and who is not otherwise exempt from licensure. A citation issued pursuant to this section shall comply with Section 125.9 of the code. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$250 to \$2,500 for each investigation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).

§2388. Failure to File an Annual Report.

(a) Any cemetery authority that does not file the annual report required by Section 9650 of the Business and Professions Code within the time prescribed by said Code shall be assessed a fine by the director in an amount of four hundred dollars (\$400) per month for a maximum of five months. Failure to pay the fine within fifteen (15) days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed with the director, within fifteen days (15) after receipt of written notification of the director's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request to the director therefor. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The director may waive or reduce the fine where a timely request is made and he or she determines, in his or her discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

(d) In addition to requesting a hearing to be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the person cited may, within fifteen (15) days after service or receipt of the citation, notify the director in writing of his or her request for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received. An informal conference shall be in accordance with the procedures delineated in Section 2386, subdivisions (b) and (c).

Note: Authority cited: Sections 102.1, 125.9, 9630 and 9650.4, Business and Professions Code.
Reference: Sections 125.9 and 9650.4, Business and Professions Code.